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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,841	08/16/2001	Paul Nadj	SIA-P033	4552
45640	7590	08/29/2005	EXAMINER	
MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085				FILIPCZYK, MARCIN R
ART UNIT		PAPER NUMBER		
		2161		

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/931,841	NADJ ET AL.	
	Examiner	Art Unit	
	Marc R. Filipczyk	2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 June 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
  - 4a) Of the above claim(s) 1-4 and 11-21 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 5-10 and 22-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 16 August 2005 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

***Response to Amendment***

This action is responsive to Applicant's response filed on June 15, 2005 wherein claims 1-4 and 11-21 have been cancelled, claims 5-10 are amended and new claims 22-27 are submitted, thus claims 5-10 and 22-27 are pending.

**To expedite the process of examination Examiner requests that all future correspondences in regard to overcoming prior art rejections or other issues (e.g. amendments, 35 U.S.C. 112, objections and the like) set forth by the Examiner that Applicants provide and link to the most specific page and line numbers of the disclosure where the best support is found (see 35 U.S.C. 132).**

***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "associating the multiple queues with respective nodes" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

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pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 5-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth whether the invention is within the technological arts.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the “progress of science and the useful arts” (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a method claim to pass muster, the recited processes must somehow apply, involve, use, or advance the technological arts.

In the present case, independent claim 5 only recites an abstract idea. The recited steps of merely using a method for priority scheduling by providing queues and nodes do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in

the mind of the user or by use of a pencil and paper. These steps only constitute an idea of how to determine a priority queue.

Since the claimed invention, as a whole, is not within the technological arts as explained above, claim 5, and claims 6-10 which depend from claim 5, are deemed to be directed to non-statutory subject matter.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 5-10 and 22-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claimed subject matter of “associating the multiple queues with respective nodes” was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor at the time the application was filed had possession of the claimed invention.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-10 and 22-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 5 and 22, the phrase, “nodes sharing a pointer” is indefinite. It is not clear how a number of nodes can share one pointer, and it is further not clear how a specific node could be accessed if only one pointer is present. Second, the segment, “associating multiple queues with respective nodes” is not clear. It is not clear how nodes are selected to represent specific queues and how the nodes are associated with queues. Third, the phrase “multiple queues” is indefinite. It is not clear how “multiple” changes the scope of “queues”, since queues imply more than one queue. Last, “the value” is indefinite. It is not clear if the nodes use one value as implied by the claim or a number of values to determine a priority.

Regarding claims 6-10 and 23-27 depend from claims 5 and 22 respectively, and directly or indirectly incorporate the subject matter as in claims 5 and 22 and are therefore rejected to on the same merits.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 5-10 and 22-27 are rejected under 35 U.S.C. 102(e) as best as the Examiner is able to ascertain as being anticipated by Cochran et al (U.S. Patent No. 6,701,324).

Regarding claims 5 and 22, Cochran discloses a method/program for scheduling events in a computer processing system: (abstract)

identifying queues, each queue associated with a corresponding priority; (fig. 4, items 402, 404 and 406)

defining a data structure with a root level having a group node, the group node having nodes stored contiguously in memory and pointer; (fig. 1 A, item 110, 108n, 106 and 104, and col. 5, lines 18-22)

associate queues with respective nodes; (col. 5, lines 22-28)

assign a value to nodes; (col. 5, line 22, *scheduling*)

determine priority between nodes; (fig. 3, 108n, 110, 302 and related text)

select one of the queues having a highest priority (fig. 4, items 424 and 426).

Regarding claims 6-10 and 23-27, all of the features have been noted in the rejection above, in addition see rescheduling (fig. 4, item 424 and related text).

#### ***Response to Arguments***

Applicant's arguments filed on June 15, 2005 have been fully considered but they are not persuasive. The arguments and responses are listed above.

Applicant argues on page 8 of the 6/15/2005 response that claim 5 has been amended to cover statutory subject matter.

Examiner disagrees. The claimed invention must be within the technological arts. For more information see rejections above.

Applicant argues on page 8 of the 6/15/2005 response that the amended features are supported by figures 7, 8, 18A, 18D and corresponding text, and that Cochran does not teach the amended features.

Examiner disagrees. The amended claims are not fully supported by Applicant's disclosure. Second, the amended claims comprise 35 U.S.C. 112, second paragraph rejections. Last, as best as the Examiner is able to ascertain the pending claims, Cochran discloses all the claimed features. Please refer to the rejections above.

With respect to all the pending claims 5-10 and 22-27, Examiner respectfully traverses Applicant's assertion based on the discussion and rejections cited above.

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc R. Filipczyk whose telephone number is (571) 272-4019. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on (571) 272-4023. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MF  
August 19, 2005



FRANTZ COBY  
PRIMARY EXAMINER